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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 MICHAEL SHANE CATES,

9 Plaintiff,

10 v.

11 DENNIS IRWIN, *et al.*,

12 Defendants.

Case No. C15-0900-JLR-MAT

REPORT AND RECOMMENDATION

13
14 INTRODUCTION AND SUMMARY CONCLUSION

15 This is a civil rights action proceeding under 42 U.S.C. § 1983. Plaintiff Michael Cates is
16 currently in the custody of the Washington Department of Corrections serving a 300 month
17 sentence pursuant to a judgment and sentence of the Snohomish County Superior Court.
18 Plaintiff alleges in this action that his constitutional rights were violated when he was unlawfully
19 arrested in Missouri and extradited to Washington to face charges in Snohomish County Superior
20 Court. Plaintiff identifies Lake Stevens Police Department detectives Dennis Irwin and Dean
21 Thomas, and Snohomish County, as defendants in this action. Plaintiff seeks compensatory
22 damages and release from custody. Defendants have now filed motions for summary judgment.
23 Plaintiff has not filed a response to those motions but has, instead, submitted a request to

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1 withdraw his complaint, a request which defendants oppose.

2 The Court, having reviewed defendants' motions for summary judgment, plaintiff's
3 request to withdraw his complaint, and the balance of the record, concludes that plaintiff's
4 request to withdraw his complaint should be denied, that defendants' summary judgment
5 motions should be granted, and that plaintiff's complaint and this action should be dismissed with
6 prejudice.

7 FACTS

8 On December 9, 2010, an information and affidavit of probable cause were filed in
9 Snohomish County Superior Court charging plaintiff with one count of rape of a child in the first
10 degree. (Dkt. 43, Ex. A.) A summons was issued and plaintiff, who was then residing in
11 Missouri, was directed to appear for arraignment in Snohomish County Superior Court on
12 January 5, 2011. (*Id.*, Ex. B.) Plaintiff failed to appear for the hearing and Snohomish County
13 Superior Court Judge Eric Lucas entered an order determining probable cause and directing the
14 issuance of a warrant. (*Id.*, Ex. C.) A warrant of arrest was issued by the Clerk of the
15 Snohomish County Superior Court the following day, January 6, 2011. (*Id.*, Ex. D.) The
16 warrant indicated that the state would seek extradition from anywhere in the United States. (*See*
17 *id.*)

18 On June 16, 2011, plaintiff was arrested in Nixa, Missouri on the warrant authorized by
19 Judge Lucas, and plaintiff was booked into the Christian County Jail. (*See* Dkt. 39, Ex. G; Dkt.
20 42 at 4.) Plaintiff refused to sign a waiver of extradition and, because the Snohomish County
21 Prosecutor's Office was not able to obtain the funds necessary to effectuate plaintiff's
22 extradition, a decision was made to discontinue extradition proceedings and to instead serve
23 plaintiff with another summons to appear for arraignment in Snohomish County Superior Court.

1 (*See* Dkt. 42 at 5-6.) On June 22, 2011, the Christian County Sheriff's Office served plaintiff
2 with a summons directing him to appear for an arraignment hearing in Snohomish County on
3 July 20, 2011. (*See id.* at 6 and Ex. A.)

4 The following day, June 23, 2011, the Snohomish County Prosecutor's Office advised the
5 Snohomish County Sheriff's Office that the warrant hold on plaintiff could be released, but that
6 the warrant was to remain outstanding though with modified, more limited, extradition
7 boundaries. (*See id.* at 6 and Ex. B.) The Snohomish County Sheriff's Office, in turn, notified
8 Christian County to release plaintiff's hold. (*Id.* at 6.) The Lake Stevens Police Department, the
9 agency which had originally referred the case against plaintiff to the Snohomish County
10 Prosecutor's Office, was also notified that the warrant hold on plaintiff was to be released. (*See*
11 *id.*)

12 The Lake Stevens Police Department thereafter contacted the prosecutor's office and
13 advised that it would secure funding for plaintiff's transport back to Washington. (*Id.* at 7.) The
14 prosecutor's office directed the Snohomish County Sheriff's Office to change the extradition
15 boundaries back to those identified originally; *i.e.*, anywhere in the United States, and to instruct
16 the Christian County Jail to maintain their hold on plaintiff. (*See id.* at 7 and Ex. C.) Plaintiff,
17 however, had apparently already been released from the jail by the time that directive was
18 communicated. (*See id.* at 7.)

19 Plaintiff was re-arrested on the morning of June 24, 2011 on the reinstituted nationwide
20 warrant and was booked back into jail. (*Id.* at 7.) An initial hearing was held later that same day
21 and plaintiff again refused to waive extradition. (Dkt. 42 at 7.) The Snohomish County
22 Prosecutor's Office proceeded to prepare and gather the documents necessary for extradition,
23 including an application for requisition and a governor's requisition and warrant. (*See id.* at 7)

1 and Ex. D.) The Governor of the State of Washington issued a requisition for plaintiff to the
2 Governor of the State of Missouri on July 28, 2011. (*Id.* at 9 and Ex. F.) On August 15, 2011,
3 the Missouri Governor issued a governor's warrant for the arrest of plaintiff, and directed that
4 plaintiff be delivered into the custody of the duly authorized agent of the State of Washington.
5 (*Id.* at 10 and Ex. G.)

6 The Lake Stevens Police Department and the Snohomish County Sheriff's Office
7 thereafter made arrangements to transport plaintiff back to Washington. (*Id.* at 10.) Detectives
8 Dean Thomas and Dennis Irwin escorted plaintiff back to Washington on August 29, 2011, and
9 plaintiff was booked into the Snohomish County Jail. (*See id.* at 11 and Ex. H; Dkt. 39, Ex. K.)
10 Plaintiff was arraigned on August 30, 2011, and he entered a not guilty plea to the charge of rape
11 of a child in the first degree. (Dkt. 42 at 11; Dkt. 39, Ex. M.) The prosecutor filed an amended
12 information on January 17, 2012, charging plaintiff with three additional counts including a
13 second count of rape of a child in the first degree and two counts of child molestation in the first
14 degree. (Dkt. 43, Ex. E.) Trial commenced the same day. (*Id.*) Plaintiff was subsequently found
15 guilty by jury verdict on all four counts of the amended information. (*Id.*, Ex. F.) He was
16 sentenced on April 24, 2012, and the judgment and sentence was filed on May 4, 2012. (*Id.*)

17 DISCUSSION

18 Defendants argue in their motions for summary judgment that plaintiff's claims are
19 barred by the statute of limitations and, in any event, that plaintiff has not established any
20 violation of a constitutional right. (*See* Dkts. 38, 41.) As noted above, plaintiff has not filed any
21 opposition to the pending motions for summary judgment but has, instead, asked to withdraw his
22 complaint, a request which defendants Irwin and Thomas oppose. (*See* Dkts. 45, 47-49.)

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Request to Withdraw Complaint

On January 29, 2016, the date defendants' motions for summary judgment were noted for consideration, the Court received a letter from plaintiff asking that his case against defendants be withdrawn. (Dkt. 45.) Plaintiff indicates in his letter that though he believes he has a meritorious case, he does not have access to an adequate law library and he does not have the ability to pursue the case further without the assistance of counsel. (*Id.*) Defendants Irwin and Thomas oppose plaintiff's request, arguing that plaintiff has been dilatory in seeking voluntary dismissal and that he is only seeking voluntary dismissal now because of the likelihood that he is going to lose. (Dkt. 47.) Defendants Irwin and Thomas ask that the Court rule on their pending summary judgment motion. (*Id.*)

The Court does not perceive any improper motive on plaintiff's part in seeking voluntary dismissal at this juncture. However, the Court concludes that plaintiff's request to withdraw his complaint should nonetheless be denied. As will be explained in greater detail below, defendants' summary judgment motions appear to establish that plaintiff's complaint is barred by the statute of limitations. Thus, even if plaintiff were permitted to voluntarily dismiss this action now, it is unlikely that he would be able to pursue it at any future date. Plaintiff will therefore receive no benefit from being permitted to withdraw his complaint and ruling on defendants' summary judgment motions will provide them the finality they desire. This Court therefore recommends that plaintiff's request to withdraw his complaint be denied.

Summary Judgment Standard

Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there exists "no genuine dispute as to any material fact" such that "the movant is entitled to judgment as a matter of law." *See* Fed. R. Civ. P. 56(a); *Anderson v.*

1 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Material facts are facts which might affect the
2 outcome of the pending action under governing law. *See Anderson*, 477 U.S. at 248. Genuine
3 disputes are those for which the evidence is such that “a reasonable jury could return a verdict
4 for the nonmoving party.” *Id.*

5 In response to a properly supported summary judgment motion, the nonmoving party
6 may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
7 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the
8 existence of the elements essential to his case. *See Fed. R. Civ. P. 56(e)*. A mere scintilla of
9 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on a
10 motion for summary judgment, the court may not weigh the evidence or make credibility
11 determinations. *Id.* at 248.

12 Statute of Limitations

13 For claims brought under 42 U.S.C. § 1983, federal courts apply the forum state’s statute
14 of limitations governing personal injury actions. *See Wilson v. Garcia*, 471 U.S. 261 (1985).
15 Thus, the applicable limitations period for plaintiff’s claims is three years. RCW 4.16.080(2).
16 Although state law provides the applicable limitations period for plaintiff’s claims, federal law
17 determines when the cause of action accrues. *See Fink v. Shedler*, 192 F.3d 911, 914 (9th Cir.
18 1998)(citing *Elliott v. City of Union City*, 25 F.3d 800, 802 (9th Cir. 1994)). Under federal law, a
19 cause of action accrues “when the plaintiff has a complete and present cause of action . . . that is,
20 when the plaintiff can file suit and obtain relief.” *Wallace v. Kato*, 549 U.S. 384, 388 (2007)
21 (internal quotations omitted).

22 Defendants argue in their motions for summary judgment that the statute of limitations
23 began to run for purposes of this civil rights action on May 4, 2012, the date judgment was

1 entered in plaintiff's criminal proceedings. Defendants suggest two possible justifications for
2 their assertion that the limitations period began to run on the date judgment was entered, one
3 based on accrual and one based on tolling. Defendants maintain that where, as here, a plaintiff's
4 claim is derivative of his arrest, extradition and subsequent conviction, the cause of action
5 accrues when final judgment is entered by the trial court. *Morales v. City of Los Angeles*, 214
6 F.3d 1151, 1152 (9th Cir. 2000). Defendants also acknowledge that plaintiff benefits from the
7 tolling provision of RCW 4.16.190 which provides that if, at the time an action accrues, a person
8 is "imprisoned on a criminal charge prior to sentencing," the applicable statute of limitations is
9 tolled during the time of the disability.¹

10 While defendants offer these two possible justifications for their position, they don't
11 clearly commit to either one, arguing only that the statute of limitations began to run on May 4,
12 2012, and expired three years later on May 4, 2015, approximately one month before plaintiff
13 presented his civil rights complaint to this Court for filing on June 4, 2015. This Court concurs
14 that under either analysis suggested by defendants, the statute of limitations in this matter began
15 to run, at the latest, on May 4, 2012, the date judgment was entered in plaintiff's state court
16 criminal proceedings. Plaintiff's complaint, which was signed on May 15, 2015, and was
17 received for filing on June 4, 2015, is therefore untimely and this action should therefore be
18 dismissed on this basis.

19 Improper Service

20 Given this Court's conclusion with respect to defendants' statute of limitations argument,
21 the Court need not address the other arguments raised by defendants in their summary judgment

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23 ¹ Federal courts apply a forum state's law regarding tolling, including equitable tolling, in actions brought under § 1983. *See Fink*, 192 F.3d at 914 (citing *Hardin v. Straub*, 490 U.S. 536, 537-39 (1989)).

1 motions. However, there is one additional argument raised by defendants Irwin and Thomas that
2 warrants at least brief discussion. Defendants Irwin and Thomas argue that they should be
3 dismissed from this action for lack of personal jurisdiction because plaintiff failed to serve them
4 with a summons and complaint within 120 days of filing his complaint. (*See* Dkt. 38.)

5 Because plaintiff was granted leave to proceed *in forma pauperis*, this Court assumed
6 responsibility for effectuating service on defendants as it does in all such cases involving
7 prisoners. The Court ordered that defendant Snohomish County be personally served by the
8 United States Marshal in accordance with Rule 4(j) of the Federal Rules of Civil Procedure. (*See*
9 Dkt. 7.) The Court ordered that defendants Irwin and Thomas be served by first class mail and
10 requested that they waive service of summons in accordance with Rule 4(d) of the Federal Rules
11 of Civil Procedure. (*See* Dkt. 6.) The Court presumes that defendants Irwin and Thomas
12 received their service packets because the packets were never returned to the Court and because
13 counsel appeared on behalf of these two defendants a mere five days after the service packets
14 were mailed. (*See* Dkts. 9 and 10.)

15 The record reflects that defendants Irwin and Thomas never returned their waivers of
16 service. Plaintiff should not be penalized for a deficiency that appears to be attributable to
17 defendants. Moreover, the remedy at this juncture for the alleged deficiency in service of
18 process would be for the Court to order personal service of the summons and complaint on
19 defendants Irwin and Thomas and to assess the costs of such service against them. *See* Fed. R.
20 Civ. P. 4(d)(2). If defendants wish to stay resolution of their pending motion for summary
21 judgment until the service issue is resolved, they may so advise the Court by filing objections to
22 this Report and Recommendation. Otherwise, the Court will deem defendants to have consented
23 to the Court's jurisdiction for purposes of resolving their pending summary judgment motion.

CONCLUSION

Based on the foregoing, this Court recommends that plaintiff's request to withdraw his complaint be denied. This Court further recommends that defendants' motions for summary judgment be granted and that plaintiff's complaint, and this action, be dismissed with prejudice. A proposed order accompanies this Report and Recommendation.

Objections to this Report and Recommendation, if any, should be filed with the Clerk and served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report and Recommendation is signed. Failure to file objections within the specified time may affect the right to appeal. Objections should be noted for consideration on the District Judge's motions calendar for the third Friday after they are filed. Responses to objections may be filed within **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be ready for consideration by the District Judge on **May 6, 2016**.

DATED this 12th day of April, 2016.



Mary Alice Theiler
United States Magistrate Judge